

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JIMMIE LEE TAYLOR

APPELLANT,

**v.
THE BAR PLAN MUTUAL
INSURANCE COMPANY, ET AL.**

RESPONDENTS.

DOCKET NUMBER WD76380

DATE: April 29, 2014

Appeal From:

Jackson County Circuit Court
The Honorable Sandra Midkiff, Judge

Appellate Judges:

Special Division: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer, Special Judge

Attorneys:

John H. Campbell, Camdenton, MO and Jonathan Sternberg, Kansas City, MO, for appellant.

Brent W. Baldwin, St. Louis, MO and Spencer J. Brown, Kansas City, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

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APPELLANT,

v.

**THE BAR PLAN MUTUAL
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RESPONDENTS.

No. WD76380

Jackson County

Before Special Division: Cynthia L. Martin, Presiding Judge, Gary D. Witt, Judge and Zel M. Fischer, Special Judge

This case involves the interpretation of an insurance contract providing coverage for legal malpractice. Appellant, upon the advice of his now-disbarred attorney, made several loans to the law firm of the attorney and to a separate entity, which was also a client of the attorney. After both the attorney and the other entity defaulted on the loans, Appellant filed and prevailed in a civil action against the attorney for malpractice. In this subsequent equitable garnishment action, the attorney's malpractice insurer was granted summary judgment.

Appellant asserts one point on appeal. He argues that the trial court erred in entering summary judgment in favor of the insurer the ground that the phrase "resulting in investment in an enterprise" in the exclusion is ambiguous. He asserts additionally that a covered concurrent proximate cause will result in coverage even if another cause is excluded, that the insurer's asserted exclusion is not applicable because the disbarred attorney's firm was a professional corporation in which non-lawyers are legally barred from "investing," and that additional ambiguity arises because the exclusion is dependent on other "capacities" in that it combines multiple, separate exclusions by use of the word "and."

Majority Opinion holds:

REVERSED

(1) On this issue of first impression, we determine that the proper lens for review of a legal malpractice insurance policy is through the eyes of a reasonable attorney purchasing the insurance.

(2) The insurer did not meet its burden of establishing that a reasonable attorney purchasing this insurance would have reasonably understood that legal services provided to document loans being made by a client would be excluded because none of the loans constituted an "investment in an enterprise" under the exclusion in the policy.

Judge Fischer's Separate Opinion, Concurring in Part and Dissenting in Part, States:

(1) In concurrence, Judge Fischer agrees that the standard for determining whether ambiguity exists in a legal malpractice insurance policy is whether a reasonable attorney would conclude that coverage would be available pursuant to the terms of the policy.

(2) In dissent, Judge Fischer would hold that the policy exclusion plainly and unambiguously bars coverage of Taylor's claims, as the circuit court ruled, because a reasonable attorney would not conclude that the loans Wirken advised Taylor to make were not "investments in enterprises" under the policy exclusion.

Majority Opinion by Gary D. Witt, Judge with Judge Martin joining

April 29, 2014

Concurring in part and Dissenting in part Opinion by Zel M. Fischer, Special Judge

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